

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER MICHAEL CARRAMUSA,

Defendant and Appellant.

D073484

(Super. Ct. No. SCD270824)

APPEAL from a judgment of the Superior Court of San Diego County, Runston G. Maino, Judge. Reversed and remanded for resentencing, and otherwise affirmed.

Ashley N. Johndro, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Adrian R. Contreras, Deputy Attorneys General, for Plaintiff and Respondent.

Christopher Carramusa appeals following his guilty plea to one count of first degree burglary (Pen. Code, § 459)¹ and his admission to a prior criminal history including one prior strike (§§ 667, subd. (b)-(i), 668, 1170.12) and one prior serious felony (§ 667, subd. (a)(1), 668, 1192.7.) The trial court sentenced Carramusa to a term of 17 years in prison.

Carramusa contends (1) the trial court abused its discretion by denying his motion to strike his prior strike; and (2) we should remand this matter based on newly enacted Senate Bill 1393 so that the trial court may decide whether to exercise its discretion to strike the five-year sentence enhancement imposed for Carramusa's prior serious felony (§ 667, subd. (a)). We conclude that the trial court did not abuse its discretion in denying the motion to strike the prior strike, but we will remand this matter so that the trial court may decide whether to exercise its discretion to strike the five-year enhancement for the prior serious felony.²

I.

FACTUAL AND PROCEDURAL BACKGROUND

According to the facts set forth in the probation officer's report, a house was burglarized during the afternoon of November 29, 2016, and over \$80,000 in jewelry was

¹ Unless otherwise noted, all further statutory references are to the Penal Code.

² Carramusa has also filed a petition for writ of habeas corpus (Case No. D074746), which we have denied in a separate order.

taken.³ Police eventually identified Carramusa as a suspect based on security camera footage and telephone records.

An amended information charged Carramusa with one count of first degree burglary of an inhabited dwelling. (§§ 459, 460, subd. (a).) The information also alleged that Carramusa incurred numerous probation-denial prior felony convictions (§ 1203, subd. (e)(4)), four prior prison terms (§§ 667.5, subd. (b), 668), a prior serious felony (§§ 667, subd. (a)(1), 668, 1192.7, subd. (c)), and a prior strike (§§ 667, subds. (b)-(i), 668, 1170.12).

On December 12, 2017, Carramusa pled guilty to burglary of an inhabited dwelling and admitted his probation-denial prior felony convictions (§ 1203, subd. (e)(4)), four prior prison terms (§ 667.5, subd. (b), 668), a prior serious felony (§ 667, subd. (a)(1), 668, 1192.7), and a prior strike (§§ 667, subds. (b)-(i), 668, 1170.12). The plea agreement contained no deal regarding Carramusa's sentence.

On January 23, 2018, the trial court denied Carramusa's motion to strike his prior strike, and it sentenced Carramusa to a prison term of 17 years. On January 29, 2018, Carramusa filed a timely notice of appeal.

³ Because Carramusa pled guilty, we base our recitation of the facts on the probation officer's report.

II.

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion by Denying Carramusa's Motion to Strike His Prior Strike*

We first consider Carramusa's contention that the trial court abused its discretion in denying his motion to strike his prior strike.

A trial court may strike prior felony conviction allegations in cases prosecuted under the Three Strikes law when such an order is "in furtherance of justice." (§ 1385, subd. (a); see *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) "[T]he law creates a strong presumption that any sentence that conforms to [its] sentencing norms is both rational and proper." (*People v. Carmony* (2004) 33 Cal.4th 367, 378 (*Carmony*).) In deciding whether to strike prior conviction allegations, the court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

We review a trial court's refusal to strike prior conviction allegations for abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 375.) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at p. 377.) "Where the record demonstrates that the trial court

balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

Carramusa's prior strike was a conviction based on a guilty plea to battery with serious bodily injury in 1994. (§ 243, subd. (d).) According to the probation officer's report, Carramusa described the incident as involving a "play argument" with a friend that got out of control and resulted in the friend striking his mouth on the side of a newspaper vending machine and injuring his teeth. Carramusa argued that the trial court should strike the strike because it occurred 24 years ago, when he was 19 years old; he did not realize it would constitute a strike when pleading guilty in 1994; and he felt bad about the incident and had no desire to hurt his friend. Carramusa further argued that he had "demonstrated a desire and ability to be rehabilitated" based on positive letters from family members and employers, and he pointed out that the present offense did not involve physical harm to others.

In denying the motion to strike, the trial court provided a lengthy explanation for its ruling. First, focusing on the age and the seriousness of the strike, the trial court observed that the strike was 24 years old and it was "not the most serious of assaults." Next, turning to the nature of the present offense, the trial court observed that it was "a very serious offense." Specifically, Carramusa committed a first degree burglary while a resident was on the property; Carramusa could well have encountered the victims if "things had gone slightly differently;" and the victims' loss from the burglary was "huge." Finally, examining Carramusa's conduct since he incurred the strike in 1994, the trial

court observed that although Carramusa may desire to be law abiding, he has not been successful in doing so. The trial court listed Carramusa's extensive criminal history since incurring the 1994 strike, including the following felony convictions: taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)), transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)), and battery of emergency personnel (§ 243, subd. (c)) in 1994; driving under the influence causing injury (Veh. Code, § 23153, subd. (a)) in 1997; oral copulation of a person under 16 (§ 288a, subd. (b)(2)), and committing lewd and lascivious act of a child age 14-15 (§ 288, subd. (c)(1)) in 2001; evading police with reckless driving (Veh. Code, § 2800.2) in 2005; and failure to register as a sex offender (§ 290.018, subd. (b)) in 2015. In addition, as the trial court noted, Carramusa incurred misdemeanor convictions for being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)) and dissuading a witness (§ 136.1, subd. (a)) in 1994; and for vandalism (§ 594, subs. (a), (b)(1)) and resisting arrest (§ 148, subd. (a)(1)) in 2017.

The trial court explained, "So when I take all three of these factors together I just can't strike the strike. If this was not so serious, this present offense, and/or [he] didn't have this litany of offenses I would strike the strike without a doubt. If he had been basically crime-free since the strike I would strike the strike. Even I think with a first degree burglary I might well do that, but not with this record."

In arguing that the trial court abused its discretion, Carramusa contends that the trial court did not exercise its "informed discretion" in deciding to deny the motion to strike because it "failed to appreciate" the "nonserious character" of Carramusa's prior

strike. We reject the argument because it is contradicted by the record, which shows that the trial court expressly considered and recognized the relatively minor nature of the prior strike. Specifically, the trial court stated the strike was "not the most serious of assaults" and was "a minor type of assault in the big spectrum of assaults we look at." As the trial court reasonably concluded, however, other considerations weighed against striking the strike, namely the serious nature of the present offense and Carramusa's extensive criminal history.

Carramusa also argues that the trial court abused its discretion by relying on his extensive criminal history as a basis for denying the motion to strike. Carramusa contends that his criminal history was not significant because, until the instant offense of first degree burglary, none of the crimes he committed after his 1994 strike meet the statutory definition of serious or violent felonies under the Three Strikes Law. Put another way, Carramusa contends that despite his history as a career criminal, because it was more than two decades before he incurred his second strike in the instant case, he falls outside the spirit of the Three Strikes Law. We reject the argument.

A court acts well within its discretion in concluding that a defendant who engages in a long course of criminal conduct lasting for over two decades between the commission of his first and second strike is a person who falls squarely within the spirit of the Three Strikes Law because he has failed to remain law abiding and has continued to lead a life of crime. "[T]he circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record,

the continuation of which the law was meant to attack.' " (*Carmony, supra*, 33 Cal.4th at p. 378.) Moreover, although the crimes that Carramusa committed between his first and second strike did not meet the definition of serious or violent felonies under the Three Strikes Law, they nevertheless represented significant and harmful criminal behavior, including sex crimes against a minor, battery of emergency personnel, stealing a car, causing injury while driving under the influence, and evading police with reckless driving. "Indeed, [Carramusa] appears to be 'an exemplar of the "revolving door" career criminal to whom the Three Strikes law is addressed.' " (*Id.* at p. 379.)

In sum, based on Carramusa's extensive criminal history since incurring his 1994 strike, which includes several significant offenses, the trial court reasonably could conclude that Carramusa did not fall outside of the spirit of the Three Strikes law. Therefore, Carramusa has not established that the trial court abused its discretion in denying the motion to strike his prior strike.

B. *Remand Is Required to Allow the Trial Court to Decide Whether to Exercise Its Discretion to Strike the Five-Year Enhancement for Carramusa's Prior Serious Felony Conviction*

The trial court imposed a five-year prison term enhancement under section 667, subdivision (a) based on Carramusa's admission that he incurred a prior serious felony. (§ 667, subd. (a).) In so doing, the trial court expressly noted that it had no legal ability to strike the five-year enhancement and no discretion to decline to impose it.

On September 30, 2018, after Carramusa was sentenced, the Legislature enacted Senate Bill 1393 (Stats. 2018, ch. 1013, §§ 1-2), which amended section 1385 to give the trial court discretion to strike five-year enhancements for prior serious felony convictions

under section 667, subdivision (a). Effective January 1, 2019, Senate Bill 1393 amended section 1385 by deleting subdivision (b), which previously stated: "This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667." Carramusa contends that because his conviction is not yet final, we should remand this matter to allow the trial court to decide whether to exercise its discretion to strike the five-year enhancement imposed under section 667, subdivision (a).

The People agree that the amendment to section 1385 providing the trial court with discretion to strike a five-year enhancement for a prior serious felony conviction under section 667, subdivision (a) applies retroactively to non-final cases, and that this case should therefore be remanded. (See *People v. Garcia* (2018) 28 Cal.App.5th 961, 971-972 [Senate Bill 1393 "applies retroactively to all cases or judgments of conviction in which a five-year term was imposed at sentencing, based on a prior serious felony conviction, provided the judgment of conviction is not final when [it] becomes effective on January 1, 2019"].)

We therefore remand for the trial court to decide whether to exercise its discretion to strike the five-year enhancement for Carramusa's prior serious felony conviction. (§ 667, subd. (a).) We express no opinion as to how the trial court should exercise its discretion.

DISPOSITION

The judgment is reversed for the purpose of remanding to the trial court with directions that it decide whether to exercise its discretion to strike the five-year enhancement for Carramusa's prior serious felony conviction. If the trial court decides to exercise its discretion to strike the enhancement, it shall resentence Carramusa. If the trial court does not strike the enhancement, it shall reinstate the sentence. In all other respects, the judgment is affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

DATO, J.